IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1601 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PALITANA MUNICIPALITY - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DD VYAS for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/12/2005

ORAL JUDGMENT

In the present petition, the Palitana Municipality has prayed, inter alia, for a writ declaring that all the open plots of the land, survey numbers and kharabas

including survey No.498 and 109 which are situated within the petitioner Municipality's limits belong to the petitioner Municipality and it is the petitioner Municipality alone which has the right to deal with these lands.

2. The petition was filed at a stage when respondent No.1 State Government was seeking to divest some of the lands situated within the municipal limits of the petitioner Municipality in favour of the Gujarat Tourism Development Corporation. Challenging the said action, a petition being Special Civil Application No.2082 of 1986 was filed. Subsequently, the present petition was also filed for a more general relief noted herein-above.

3. The short controversy involved in the present petition is with respect to the vesting of open lands within the limits of the petitioner Municipality. It is the case of the petitioner-Municipality that the management and control of all open lands situate within the municipal limits vest in the petitioner Municipality and the State Government would have no right to deal with such lands and it is only the Municipality which can deal with such lands in accordance with the provisions made in the Gujarat Municipalities Act.

4. The issues arising in the present petition are no longer res integra. While deciding a similar issue between the Porbandar Nagarpalika and the State Government, learned single Judge of this Court in the case of Porbandar Nagarpalika v. State of Gujarat, 1991 (2) GLR 991, took note of various notifications issued by the

State Government by which the lands situate within the municipal limits were vested in the Municipality. Observations made in para 6 of the said judgment can be noted.

> "6. The Notification of 1950 also makes it clear that the vacant unsold plots were vested in the Municipalities only for that limited purpose as can be gathered from the fact that it further provided that the plots were placed under the direction, management and control of the said Municipalities and were to be held and applied by the Municipalities as trustees thereof. The Notification of 1955 does not and could not have made any change in this position. Only change which it made was that whereas earlier, plots of land measuring 500 sq. yards or less were not to be reserved, after the said notification, all plots, irrespective of their size, stood transferred to the petitioner-Municipality, except the plots mentioned in the Schedule to that notification.

On the basis of the above observations, it was held that considering the provisions of section 50 of the Gujarat Municipalities Act and the notifications issued by the State Government, it will have to be held that all open plots of lands situated within the municipal limits of the Nagarpalika vest in and belong to it and therefore it has the right to dispose of same by sale, lease, etc. of course, subject to the provisions and for the purpose of the Act. It was further held that so long as these lands continue to vest in the petitioner Municipality, neither the State Government nor the Collector would have power to deal with such open plots of lands. It was, therefore, concluded that though the lands do not vest in the Municipality absolutely, the contention that the Government and its officers have the right to dispose of such plots cannot be accepted. This decision in the case of Porbandar Nagarpalika (supra) was followed by the learned single Judge of this Court in the case of Palitana Municipality vs. Collector & another being a decision dated 8.1.96 rendered in Special Civil Application No.2082 of 1986. It was noted that the decision of this Court in the case of Porbandar

Nagarpalika (supra) was upheld by the Division Bench of this Court and the matter was also unsuccessfully carried to the Apex Court. Following the ratio laid down by this Court in the case of Porbandar Nagarpalika (supra), the learned single Judge was pleased to allow the petition and the order passed by the Collector was quashed.

5. In the present petition, the stand of the petitioner-Municipality is required to be upheld in view of the above-mentioned judicial pronouncements of this Court. To the extent the prayer of the petitioner with respect to open plots of land situated within the Municipal limits, its case is required to be accepted.

6. Learned AGP Shri Gori relied on a decision of the Hon'ble Supreme Court in the case of Bhavnagar Municipality v. Union of Inida, AIR 1990 SC 717 to urge that the petitioner Municipality cannot stake its claim over the lands with buildings. Since the claim of the petitioner Municipality is only with respect to open plots of lands and since this Court had in the earlier decisions mentioned herein-above confined its discussion to open pieces of land, I need not deal with such controversy.

7. Accordingly while allowing this petition, it is provided that in so far as the open pieces of lands which are situated within the municipal limits of the petitioner Municipality are concerned, the same would vest in the petitioner Municipality subject to the provisions contained in the Gujarat Municipalities Act and it would not be open for the State Government to deal with such lands till they remain within domain of the Municipality to deal with. With these directions, the petition is disposed of. Rule

is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)